
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

BRYAN KEITH RICHARDSON,

§

Plaintiff,

§

versus

§ CIVIL ACTION NO. 1:16-CV-62

UNITED STATES OF AMERICA,

§

Defendant.

§

**MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Bryan Keith Richardson, a former prisoner, proceeding *pro se*, brought this civil action pursuant to the Federal Tort Claims Act against the United States of America.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the action for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

Because the statute of limitations would bar future litigation of plaintiff's claims, a dismissal would act as a dismissal with prejudice. A dismissal with prejudice is appropriate only if there is a clear record of delay or contumacious conduct by the plaintiff, and if lesser sanctions would not serve the interests of justice. *Coleman v. Sweetin*, 745 F.3d 756, 766 (5th Cir. 2014).

In this case, plaintiff has not exhibited a clear record of contumacious conduct. However, plaintiff has shown no interest in prosecuting this case since July 11, 2019, when he last contacted the court. On March 18, 2020, a court order sent to plaintiff's last known address was returned as undeliverable, and plaintiff has not provided the court with his current address.

The court has considered imposing lesser sanctions and found them inadequate to address the current situation. Because plaintiff is proceeding *in forma pauperis*, the imposition of monetary sanctions is almost certainly futile. Further, this case would remain suspended in limbo, unable to proceed, so long as plaintiff fails to provide the court and the defendant with his current address. A dismissal is the only sanction available in this instance, but the court will lessen the sanction by allowing plaintiff to reopen the case by providing within sixty days of the date the judgment is entered.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#95) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 20th day of August, 2020.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE